



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: DECEMBER 05, 2022

IN THE MATTER OF:

Appeal Board No. 625756

PRESENT: GERALDINE A. REILLY, MEMBER

The Department of Labor issued the initial determinations disqualifying the claimant from receiving benefits, effective September 27, 2021, on the basis that the claimant voluntarily separated from employment without good cause and, in the alternative, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to September 27, 2021 cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed September 19, 2022 (), the Administrative Law Judge overruled the initial determinations.

The Commissioner of Labor appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statement submitted on behalf of the Commissioner of Labor.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was employed as an administrative assistant by the employer, a medical center, from 2019 through September 27, 2021.

In September 2021, the employer notified the claimant that she had to receive the COVID-19 vaccine or obtain an exemption otherwise her employment would end.

The claimant is a Baptist and she believes that the Bible instructs her not to take the blood of other humans into your body so she could not take the COVID-19 vaccine because it is derived from fetal tissue. She requested a religious exemption which was denied.

On September 27, 2021, the employer placed the claimant on an unpaid administrative leave and separated the claimant from her job on November 23, 2021 because she did not receive the COVID-19 vaccine.

OPINION: The credible evidence establishes the employer ended the claimant's employment for failing to comply with the COVID-19 vaccine mandate, a condition of continued employment. The claimant was aware of this requirement and that she could be separated from employment if she chose not to comply thus we find that she provoked her discharge. A provoked discharge occurs when a claimant voluntarily violates a legitimate known obligation, leaving the employer no choice but to discharge her. A provoked discharge is considered a voluntary leaving of employment without good cause for unemployment insurance purposes and subjects a claimant to a disqualification from receiving benefits (see, *Matter of DeGrego*, 39 NY2d 180 [3d Dept 1976]).

In this matter, the obligation in question was compliance with the employer's vaccine requirement. It is significant that this requirement was established for the purpose of complying with the New York State's directives during the pandemic. The Courts have long held that New York State has the authority to regulate public health, including mandating vaccinations to curb the spread of disease (see *Matter of Garcia v. New York City Dept. of Health & Mental Hygiene*, 31 NY3d 601 [2018]; *Matter of C.F. v. New York City Dept of Health & Mental Hygiene*, 191 AD3d 52 [2d Dept 2020]; and *Matter of New York City Mun. Labor Comm. v. City of New York*, 73 Misc.3d 621 [Sup. Ct. N.Y. Cnty. 2021]). Due to the severity of the ongoing COVID-19 crisis, the mandate was justified by a compelling governmental interest. Therefore, we find that the employer's requirement for the claimant to be vaccinated was a legitimate obligation and the employer had no choice but to end the claimant's employment when she refused to do so.

Further, although the claimant's contention that her refusal to vaccinate was based on religious concerns, we note that the Supreme Court of the United States has held that an individual is not relieved of the obligation to comply with a law that requires an act contrary to the individual's religious beliefs

as long as the law is not specifically directed to religious practice and is constitutional when applied to those who engage in the act for nonreligious reasons. Accordingly, the claimant has not substantiated that she had good cause for ending continuing employment and we conclude that she was properly denied benefits. In light of the foregoing, the issue of misconduct is academic.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination, disqualifying the claimant from receiving benefits, effective September 27, 2021, on the basis that the claimant voluntarily separated from employment without good cause, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

GERALDINE A. REILLY, MEMBER